

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK ALLEN TRENT,

Petitioner,

2:02-cv-1647-GEB-JFM-P

vs.

JOE MCGRATH, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 6, 2007 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

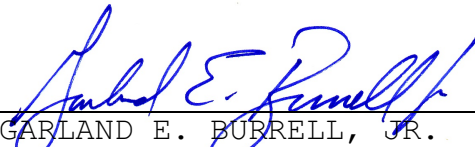
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

2           Petitioner has made a substantial showing of the denial of a constitutional right in  
3 the following issues presented in the instant petition: (1) whether he received ineffective  
4 assistance of trial counsel; and (2) whether jury instruction error violated his right to due process.

5           Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
6 issued in the present action.

7 Dated: October 19, 2007

8   
9 \_\_\_\_\_  
10 GARLAND E. BURRELL, JR.  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

---

25           <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of  
a certificate of probable cause. Jennings, at 1010.